



City of Long Beach

Working Together to Serve

2003 - 2004

ANNUAL REPORT

ROBERT E. SHANNON

City Attorney



The duties of the City Attorney's office are set forth in the City's Charter, which provides that the City Attorney shall be the sole and exclusive legal advisor of the City, City Council, and all City commissions, committees, officers and employees. The office is charged with municipal legal responsibilities as complex as any in the state.

It furnishes the legal support for a full service municipal corporation, including departments of Police, Fire, Public Works, Planning and Building, Community Development, Library and Refuse.

In addition, on a daily basis, the office provides legal advice and assistance to all of the City's major enterprise activities (many of which are not normally undertaken by municipalities). They include the following departments:

Port of Long Beach - One of the nation's busiest container ports.

Oil Properties - The nation's only municipal crude oil production company.

Airport - The twelfth busiest airport in the nation.

Gas - One of only three municipal natural gas utilities in California.

SERRF - The only successful large operating municipal trash-to-energy plant in California. It generates enough energy to fill the needs of 100,000 people per day.

Water - Provides complete water and sewer service.

Tidelands - Includes a major convention and entertainment complex and the largest small boat marina in the United States as well as 5-1/2 miles of beaches and lifeguard services.

Public Health - One of only three municipal public health departments in California.

Towing/Storage/Impound - One of the few municipal towing and storage operations in the state.



Administration Division

Oversees the management of the office consisting of 70 employees, including 22 attorneys.

Litigation Division

The Litigation Division handles all litigation on behalf of the City before judicial and administrative bodies including actions involving personal injury and property damage, civil rights violations, excessive force, constitutional issues, personnel disputes, dangerous conditions of public property, breach of contract and real estate issues.

Departmental Counsel Division

The Departmental Counsel Division provides legal advice to City boards and commissions, including the City Council, Planning Commission, Civil Service Commission, Redevelopment Agency, Housing Authority, Board of Water Commissioners, Board of Examiners, Appeals and Condemnation, Citizens' Police Complaint Commission, Airport Advisory Commission, and the Long Beach Housing Development Company. The Division also drafts contracts, resolutions, ordinances, opinions and other regulations for all City departments. In addition, the Division is responsible for providing legal services in connection with the City's Code enforcement and nuisance abatement activities.

Harbor Division

The Harbor Division provides legal advice and opinions, drafts contracts, resolutions, ordinances and other regulations for the Board of Harbor Commissioners and the Harbor Department.

Workers' Compensation Division

The Workers' Compensation Division provides legal advice regarding all workers' compensation litigation and workers' compensation administration for the City.

LITIGATION DIVISION

July 1, 2003 through June 30, 2004
(6 Attorneys)

STATISTICS

(All cases described below are handled by City Attorney personnel, with the sole exception of Pitchess motions)

TOTAL ACTIVE LITIGATION CASES	269
TOTAL NUMBER OF GOVERNMENTAL TORT CLAIMS	937
TOTAL NUMBER OF TRIALS COMPLETED BY CITY ATTORNEY	19
Jury Trials where Verdict was Reached	14
Verdicts in Favor of the City of Long Beach	9
Court Trials where Verdict was Reached	2
Judgments in favor of the City of Long Beach	2
TOTAL NUMBER OF CASES RESOLVED IN FAVOR OF THE CITY OF LONG BEACH BY PRE-TRIAL MOTIONS	27
APPELLATE DECISIONS CONCERNING THE CITY OF LONG BEACH	2
Appellate Decisions Decided in Favor of the City of Long Beach	2
TOTAL NUMBER OF PITCHESS MOTIONS	141
TOTAL NUMBER OF SUBPOENAS	598
TOTAL NUMBER OF PUBLIC RECORDS ACT REQUESTS	464

CLAIM & LAWSUIT PAYMENTS

Historical

Payments made by the City of Long Beach on Claims and Lawsuits
from July 1, 2001 to June 30, 2002 \$1,946,710.10

Payments made by the City of Long Beach on Claims and Lawsuits
from July 1, 2002 to June 30, 2003 \$1,557,018.00

Payments made by the City of Long Beach on Claims and Lawsuits
from July 1, 2003 to June 30, 2004 *\$6,793,994.01

*includes \$2.3 million for Jeffrey Grant v. City; \$750,000 for Martinez v. City; & \$570,000 for
two (2) toxic environmental cases

MONEY RECOVERED

Recovered from breach of promissory notes, property damage,
workers' compensation benefits, and breach of contract \$948,359.99

HIGHLIGHTS

JURY VERDICTS

Seventy four (74%) of verdicts in jury trials in the past five years
resulted in defense verdicts in favor of the City of Long Beach

(July 1, 2003 - June 30, 2004 - 9 of 14 jury trials resulted
in defense verdicts in favor of the City of Long Beach)

(July 1, 2002 – June 30, 2003 - 11 of 13 jury trials resulted in defense verdicts in favor of the City of Long Beach)

(July 1, 2001 – June 30, 2002 - 5 of 9 jury trials resulted in defense verdicts in favor of the City of Long Beach)

(July 1, 2000 - June 30, 2001 – 3 of 4 jury trials resulted in defense verdicts in favor of the City of Long Beach)

(July 1, 1999 - June 30, 2000 - 5 of 6 jury trials resulted in defense verdicts in favor of the City of Long Beach)

SIGNIFICANT CASES

TRIALS AND ARBITRATIONS

Mendoza v. City of Long Beach - Defense verdict in Federal court. Wrongful death. Plaintiffs alleged civil rights violation by police.

Pineda v. City of Long Beach - Defense verdict. Plaintiff alleged dangerous condition of public property.

Maria Long v. City of Long Beach - Nonsuit granted. Plaintiff alleged false arrest.

Verizon v. City of Long Beach - Bench trial - Defense. Plaintiff alleged damaged underground cables.

Dignam v. City of Long Beach - Defense verdict. Plaintiff alleged dangerous condition on public property.

Palmire v. City of Long Beach - Defense verdict. Plaintiff alleged dangerous condition on public property.

Sanchez v. City of Long Beach - Defense verdict. Plaintiff alleged dangerous condition on public property.

Talbott v. City of Long Beach - Defense verdict. Plaintiff alleged dangerous condition on public property.

Vasquez v. City of Long Beach - Defense verdict. Plaintiff alleged civil rights violation after being shot by police.

Ortiz v. City of Long Beach - Plaintiffs dismissed case after jury selection. Plaintiffs alleged civil rights, false arrest and battery.

Jordan v. City of Long Beach - Defense verdict in Federal court. Plaintiff alleged false arrest.

LaFlamme v. City of Long Beach - Nonsuit granted. Plaintiff alleged injury by emergency personnel.

Galal v. City of Long Beach - Defense verdict. Plaintiff alleged civil rights violations.

Malkhoo v. City of Long Beach - Bench trial - Defense verdict. Plaintiff alleged dangerous condition and inverse condemnation following a sewage back-up.

CASES RESOLVED PRIOR TO TRIAL OR ARBITRATION

Mc Sherry v. City of Long Beach - Motion for Summary Judgment granted in Federal court. Plaintiff alleged civil rights violations which resulted in long term incarceration.

Argueta v. City of Long Beach - Motion for Summary Judgment granted. Plaintiff alleged dangerous condition of public property.

Hartley v. City of Long Beach - Motion for Summary Judgment granted. Plaintiff alleged dangerous condition of public property.

Galal v. City of Long Beach - Motion for Summary Judgment granted in Federal Court. Plaintiff alleged inverse condemnation.

Masters (Showtime Grill) v. City of Long Beach - Motion for Summary Judgment granted in Federal Court. Plaintiff alleged civil rights violations in denial of an entertainment permit.

Baseden v. City of Long Beach - Dismissed for waiver of costs. Plaintiff alleged excessive force.

Braheem v. City of Long Beach - Dismissed for waiver of costs. Plaintiff alleged Fourth Amendment violation (search/seizure).

Cantu v. City of Long Beach - Dismissed on City's motion. Plaintiff alleged negligence regarding lost property.

Weeks v. City of Long Beach - Dismissed for waiver of costs, on eve of City's Motion for Summary Judgment. Plaintiff alleged negligence by emergency personnel left him partially paralyzed.

McClaufin v. Earthtech, City of Long Beach - Dismissed for waiver of costs, on eve of City's Motion for Summary Judgment. Plaintiff alleged negligence by City contributing to plaintiff's personal injuries.

Yankee Doodles (state) v. City of Long Beach - Demurrer sustained without leave to amend. Plaintiff alleged 14th Amendment violation, and various state claims over a business.

Yankee Doodles (federal) v. City of Long Beach - Motion for Summary Judgment granted. Plaintiff alleged civil rights and 14th Amendment violations.

Sweezer v. City of Long Beach - Dismissed for waiver of costs. Plaintiff alleged false arrest.

Delgadillo v. City of Long Beach - Dismissed upon City's motion. Plaintiff alleged false arrest and excessive force.

Joseph v. City of Long Beach - Dismissed by court. Plaintiff alleged wrongful death based upon a dangerous condition of public property.

Ryssell v. City of Long Beach - Dismissed at mediation for waiver of costs. Plaintiff alleged negligence in traffic accident.

Hitchens v. City of Long Beach - Motion for Summary Judgment granted in Federal court. Plaintiff alleged civil rights violation arising out of traffic stop.

Malkoo v. City of Long Beach - Defense motion to dismiss granted. Plaintiff alleged inverse condemnation with sewer spill. Plaintiff recently filed appeal.

Bishop v. City of Long Beach - Motion for Summary Judgment granted in Federal court. Plaintiff alleged ADA discrimination.

Mace v. City of Long Beach - Dismissal by court for failure to prosecute, after numerous non-appearances at trial. Plaintiff alleged battery and negligence by police.

A&A Ready Mix v. City of Long Beach - Dismissal for waiver of costs. Plaintiff alleged improper stop notice and failure to pay funds.

Escobedo v. City of Long Beach - Dismissal by court for failure to prosecute. Plaintiff alleged police battery.

Leonard/Murray v. City of Long Beach - Dismissal for waiver of costs. Plaintiff alleged wrongful death of parent - wrong entity.

Soto v. City of Long Beach - Dismissal by court for failure to prosecute. Plaintiff alleged dangerous condition of public property.

Keo v. City of Long Beach - Dismissed for waiver of costs. Wrongful death as result of alleged of dangerous condition of public property.

Behm v. City of Long Beach - Dismissed for failure to amend after demurrer to amend sustained by court. Plaintiff alleged back wages in her employment with City.

Pinkerton v. City of Long Beach - Dismissed for waiver of costs. Plaintiff alleged dangerous condition of public property.

ACTIONS TO RECOVER MONEY FOR THE CITY

City of Long Beach v. Pamela Ann Myers - Settlement for subrogation of worker's comp benefits in favor of the City in the amount of \$1,741.39.

City of Long Beach v. Naomi Miller - Recovered \$5,000.00 from defendant for property damage to water meter.

City of Long Beach v. Andrew Tzeng - Settlement for subrogation of worker's comp benefits and property damage in favor of the City in the amount of \$12,474.10.

City of Long Beach v. Foster Slaughter - Settlement for subrogation of worker's comp benefits in favor of the City in the amount of \$7,500.00.

City of Long Beach v. Andre Faubert - Recovered balance of unpaid promissory note in the amount of \$6,300.00.

City of Long Beach v. Mr. Move Moving & Storage - Settlement for subrogation of worker's compensation benefits in favor of the City in the amount of \$68,750.00.

City of Long Beach adv. Josephine and Fierre Gloria - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$20,917.22.

City of Long Beach adv. Wong Wook Hwang - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$7,833.02.

City of Long Beach adv. Nooshin Nabi - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$10,229.35.

City of Long Beach adv. Robert Buchman - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$6,624.89.

City of Long Beach adv. Victor Prado - Settlement of subrogation claim to insurance company for property damage in the amount of \$8,600.00.

City of Long Beach adv. Hugo Martinez - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$4,147.18.

City of Long Beach adv. Oscar Gonzales, et al. - Settlement of subrogation claim to insurance company for property damage in the amount of \$5,000.00.

City of Long Beach v. Richard Russell Christensen - Settlement of subrogation claim to insurance company for Harbor Dept. property damage in the amount of \$5,500.00.

City of Long Beach v. Bryanne Sykes - Settlement of subrogation claim to insurance company for worker's compensation benefits in the amount of \$2,980.69.

City of Long Beach adv.. Luis Rodriguez - Settlement of subrogation claim to insurance company for worker's compensation benefits and property damage in the amount of \$3,200.00.

City of Long Beach v. Moffat & Nichols - Settlement of breach of contract action resulting from alleged negligence in preparation of environment document in the amount of \$700,000.00.

Other Collections

10 Non-litigated matters resulting in collections of \$1,000.00 or less.

DEPARTMENTAL COUNSEL DIVISION

July 1, 2003 - June 30, 2004
(9 Attorneys)

STATISTICS

TOTAL ASSIGNMENTS	3,791
Ordinances prepared	75
Resolutions prepared	253
Contracts prepared	1,433
Leases prepared	44
Formal written opinions/advice memoranda	174
Memorandums of Understanding prepared	42
Permits prepared	145
Bids reviewed	20
Deeds prepared or reviewed	45
Plans & Specifications reviewed	215
Declaration & Indemnity Agreements	189
Insurance reviews & approval	874
Code enforcement activities	115
Bankruptcy claims filed by City	10
Bankruptcy cases	157

MONEY RECOVERED

Bankruptcy Collection	\$105,677.42
Assessment District Collection	\$712,345.73
TOTAL RECOVERED	\$818,023.15

SIGNIFICANT ACHIEVEMENTS

Assessment District Collection - Aggressive collection of delinquent assessment district liens including substantial litigation of foreclosure lawsuits resulting in sales of defaulted properties and collection of \$712,345.73.

Substandard Property Agreements - Drafted and negotiated agreements between the City and various owners of substandard properties in order to facilitate the timely rehabilitation of the structures.

PacifiCenter - Provided advice and counsel to the Community Development Department in connection with the preparation of the Environmental Impact Report and Development Agreement for the PacifiCenter Development on approximately 260 acres owned by the Boeing Company.

Historical Landmark Ordinances - Prepared Ordinances establishing the Annie Kinner House, Crandell/Howard House, Ebell Club and Theatre, and Killingsworth Office Building, as Historical Landmarks in the City of Long Beach.

Historical Landmark Districts - Prepared and recorded with the County Recorders Office ordinances establishing Historic Landmark Districts in the City of Long Beach, including the Drake Park/Willmore City and Eliot Lane Districts.

Historic Preservation Agreements - Prepared Historic Property Preservation Agreements between the City and various owners of historic homes in order to facilitate the continued care, maintenance and repair of declared historic home sites.

Airport Advisory Commission - Served as Advisor to the Airport Advisory Commission studying possible terminal enhancement and preparation of an Environmental Impact Report regarding the proposed project.

Environmental Documents - Prepared various environmental documents, ordinances and resolutions relating to the Alamitos Ridge Housing Development that involves the construction of 106 new residential units on approximately 14 acres of land.

55th Way Park - Provided advice and assistance to the Department of Community Development relating to the development of new neighborhood park at 55th Way.

Cultural Heritage Commission - Developed policy guidelines for the Cultural Heritage Commission relating to the appointment of Commission members to other non-profit boards and agencies.

Conflict of Interest Advice - Provided conflict of interest advice to various Board and Commission members pursuant to the Fair Political Practices Act.

Oak Tree Ordinance - Prepared and developed a tree preservation moratorium ordinance to protect historic oak trees in the City.

Sponsorship & Advertising - Advised Sponsorship and Advertising Committee regarding corporate and private sponsorship opportunities for the City.

Deferred Compensation Emergency Withdrawals - Provided advice and legal opinions to the Department of Financial Management regarding emergency withdrawal requests from employee Deferred Compensation Plans.

Civil Service Commission Hearings - Advised Civil Service Commission on a weekly basis during employee disciplinary hearings.

457 Plans - Represented City and Plan Administrator in dissolution actions involving employees' deferred compensation plans.

Kinrade v. City of Long Beach - Successfully opposed writ taken against City and Civil Service Commission by employee seeking disability retirement.

Moore v. City of Long Beach - Successfully opposed writ taken against the City and Civil Service Commission relating to employee termination.

HIPAA Compliance - Advised departments on compliance issues relating to Health Insurance Portability and Accountability Act.

Firefighter Recruit Contracts for Reimbursement - Prepared contracts for firefighter recruits and laterals requiring reimbursement to City for training costs if employee leaves fire department and is employed by another fire agency.

Benefits to Employees Called to Military Duty - Prepared resolution providing benefits to employees called to active military duty in war against terrorism, and

advised City departments regarding requirements of California Military and Veterans Code and USERRA.

Fire Department Command Staff Training - Trained Fire Department command staff on issues relating to harassment in the workplace.

Fire Department - Captain Orientation - Trained firefighters on Captain eligible list on issues relating to harassment in the workplace.

Administrative Officer Training - Provided training to City Administrative Officers on issues surrounding Weingarten Rights.

CalPERS Contract - Prepared resolutions and ordinances relating to City's contract amendment with CalPERS.

OSHA Hearings - Represented City in OSHA proceedings including informal conferences and pre-hearing conferences.

Personnel Advice - Provided legal advice to City departments on personnel issues including wage and hour law, disability accommodation, discrimination, harassment, investigations, Family Medical Leave Act, employee privacy, discipline, benefits, independent contractors and civil service matters.

Nuisance Abatement Program - Participated in approximately one dozen office meetings with property owners, business operators, and neighborhood residents, in coordination with the City Manager's Nuisance Abatement Officer, to resolve documented reports and complaints of nuisance activity occurring at residential and commercial properties. Attended community meetings addressing abatement of nuisance related activity.

Fraternity Nuisance Abatement - Participated in several CSULB related Greek Fraternity office meetings to address neighborhood concerns regarding nuisance type activities involving the Sigma Pi and Tau Kappa Epsilon fraternities.

Adult Entertainment Nuisance Abatement - Conducted formal public nuisance abatement hearings involving residential properties. Conducted formal public administrative business license/permit revocation hearings involving Live Bait, Precision Reflector Design, Inc., and the Flamingo Gentleman's Club. Conducted formal public hearings involving determination of vicious animals, and violations of rules and regulations pertaining to the keeping of such animals.

Nuisance Activity Hearings - Attended interdepartmental office hearings addressing documented nuisance activity with representatives from LBPd, Office of the City Prosecutor, City Manager's Nuisance Abatement Officer, and Housing Authority.

Crime Reports - Reviewed numerous crime reports submitted from LBPD, the City Manager's Nuisance Abatement Officer, and the Office of the City Prosecutor for possible drug evictions pursuant to Health and Safety Code section 11571.1, from which approximately 35 evictions were initiated.

Motel Nuisance Abatement - Participated in numerous office meetings with the City Manager's Nuisance Abatement Officer, LBPD, and motel owners and operators of the Club Motel, Luxury Inn, Magnolia Motel, Poolside Motel, and Tuk-U-In Motel to address complaints of loitering, prostitution, and illegal drug activity. Conducted several formal public nuisance abatement and penalty hearings involving the Coast Motel, College Inn, Coronado, and Princess Inn .

1046 Norman Court - This property was sold and loan made by the City was neither paid off nor assumed by the purchaser/current owner. The current owner had refused to acknowledge the interest of the City or the restrictions against the property flowing from the CC&Rs recorded against the property. Negotiated the full payoff by the current owner of the unpaid principal balance of \$21,743 plus accrued interest without the need to initiate litigation to reverse the purchase and sale transaction or enforce the CC&Rs.

1501 Cedar Avenue - A 16-unit apartment complex in Long Beach was rehabilitated with the proceeds of a HOME loan. The apartment complex was sold and the purchaser/current owner failed to assume or pay off the City loan. Negotiated the full refund of \$3,995 in overpayment of rent by a low-income tenant who had filed a lawsuit against the current owner, as well as a similar refund for the remaining tenant, for a combined refund to the 15 other low-income tenants of approximately \$60,000.

OC Investors, Inc. - Negotiated and documented the extension of the master lease covering the Airport Business Park and assignment of the subdivided lease on the Marriott Hotel parcel in connection with the 100 room expansion project, resulting in an additional \$861,000 payment to the City. Extension of Marriott lease resulted in additional rent of \$87,000 per year and additional Transient Occupancy Tax of approximately \$428,000 per year upon completion of 100-room addition.

Decro Alpha Scattered Properties - Assisted staff in the development of the structure, negotiation and documentation of a \$50,000 predevelopment loan to Decro, an additional \$2 million loan by the City to Decro, and the issuance by the City of up to \$15,236,000 in multifamily housing revenue bonds relating to the refinance and rehabilitation of 12 apartment complexes in the City of Long Beach which include approximately 300 affordable housing units.

West Gateway - Provided advice and counsel to staff in connection with the structure, negotiation and documentation of a \$8.146 million loan by The Long Beach Housing Development Company to Jamboree Housing Corporation to finance the acquisition of seven (7) properties comprising West Gateway Site

No. 1; preparation of a MOU between The Long Beach Housing Development Company and the Redevelopment Agency to facilitate the acquisition of the sites; and the DDA covering the construction and development of 64 rental dwelling units, 63 of which will be will be affordable to low, very low and extremely low-income residents of the City.

Pacific Apartments - Provided advice and counsel to staff in connection with the structure, negotiation and documentation of a \$1.895 million loan by the City to Effective Housing Solutions, LLC to partly finance the construction and development of a 42-unit apartment complex in the City consisting of 35-three bedroom and 8-four bedroom units affordable to Long Beach residents earning 80% of the area median, and the developer's successful procurement of \$9.6 million in tax credit financing to cover the balance of the costs associated with construction and development of the project.

Livable Places - Provided advice and counsel to staff in connection with the structure, negotiation and documentation of a \$1.092 million predevelopment loan to Livable Places, Inc. in connection with the acquisition of 1908-1910 Long Beach Boulevard and 1856 Long Beach Boulevard and \$11.339 million development thereon of 58 attached single family condominium residences. Ongoing advice and counsel in connection with additional financing required by the developer to complete the project including from the Affordable Housing Program (grant), Mercy Loan Fund (loan) and a conventional construction loan.

Long Beach Housing Development Properties - Negotiated with the Los Angeles County Assessor and State Board of Equalization to secure a \$30,090 refund of property taxes. Negotiations continue with a view towards an additional refund of approximately \$108,000.

Northpointe Apartments - Coordinated effort and provided legal advice for successful defense of Department of Industrial Relations prevailing wage claims of approximately \$133,867.

HOME Program Loans - Provided advice and counsel to staff in connection with the development and preparation of an addendum for use by landlords of properties rehabilitated with HOME funds to provide City and tenant protections and assurances required by HUD as part of City allocation of HOME funds.

Meadow Wood Village Apartments - Negotiated an extension of time to January, 2004 for 10 low -income families to relocate from the project (with relocation expenses paid by the developer) notwithstanding position of developer that terms and conditions of Regulatory Agreement authorize release of these units from their low-income designation and restriction as of December, 2003.

429 Almond Avenue - Provided advice and counsel to staff in connection with the \$1.050 million acquisition and conversion of this 8-unit property to a 4-unit property, including preparation of the documentation required to sell each of the

4 units at an affordable price and to establish a homeowners' association to ensure ongoing maintenance and preservation of the property.

Southern California Gas - Negotiated and documented the settlement of a dispute between the Port and Southern California Gas concerning pipeline relocation obligations and the \$1.5 million advance payment by the Port to Southern California Gas, pursuant to a reservation of rights, to finance the relocation of pipelines on railroad property acquired by the Port to facilitate the timely construction and development of Pier S.

ATMIS System - Preparation of a MOU between the Ports of Long Beach and Los Angeles and ACTA to detail the relative rights and responsibilities of the parties relating to a Port-wide transportation management information and security system to improve traffic conditions, safety and security for both Ports and the \$1 million reimbursement of costs incurred by the Port of Long Beach by ACTA.

Commission on Youth - Prepared ordinance that created the Commission on Youth which was requested by the City Council and which implemented part of the City's Strategic Plan 2010.

Renaissance Square Lease - Prepared lease with Union Bank as part of the redevelopment of the Atlantic Corridor which will provide, for the first time, a full service bank in the area; prepared lease with a nonprofit agency for the second floor space; and prepared a property management agreement with a private company to provide property management services to the building housing these two tenants.

Desalination Research Facility - Reviewed Specifications and prepared contract for construction of innovative desalination research facility operated by Long Beach Water Department, using prequalification to ensure quality contractors and reviewed documents relating to the Department's \$3 million grant from the US Bureau of Reclamation to pay for part of the costs of construction. This project may produce results which will eventually provide a reliable source of drinking water to Long Beach residents during periods of drought.

Mark Twain Library - Provided legal advice and prepared contract enabling the Long Beach Public Library to be successful in obtaining a \$6.3 million grant to fund the construction of a new branch library. The grant contract was placed on the website for the State Libraries as a model to other cities throughout the state to use in future grant applications.

Renovation of City Marinas - Provided legal advice to the Marine Bureau on utilizing the design-build process rather than a bid process for renovation of City marinas; reviewed Specifications and prepared contract for construction to ensure compliance with Government Code requirements for design-build projects. Long Beach is one of the few cities statewide that has been successful in utilizing design-build contracts for major construction projects.

Supplemental Agreement - Created under the Standard Specifications for Public Works Construction, for the first time, a Supplemental Agreement to the construction contract for the Public Safety Building that streamlined the installation of tenant improvements in the renovated Building and shortened the time for completion of the project so that the Police Department could move into their renovated Building sooner.

Insurance Ordinance - Revised the Municipal Code by deleting outdated sections relating to insurance requirements and, instead, established a mechanism for promulgating insurance requirements in Administrative Regulations which will save time in adjusting to the changing insurance market and will make the City's insurance requirements more "user-friendly."

Homeland Security Ordinance - Drafted an ordinance allowing the Purchasing Agent to purchase security items without advertising for bids if the cost of those items will be reimbursed from the U.S. Department of Homeland Security. This ordinance allows the Police Department to obtain, in the shortest possible timeframe, the newest equipment to protect against terrorism.

Los Altos United Methodist Church - Drafted complex Purchase and Sale Agreement, Permit for Right of Entry, escrow agreement, and various easements for a transaction involving several pieces of real property whereby the City transferred specific property to the Church in exchange for the Church's transfer of different property to the City in order to enable the Church to expand its day care program and for the Water Dept. to have a site for a new water well.

Local Preference Program - Drafted the ordinance which implemented the Charter section allowing local preference. This ordinance, which was supported vigorously by the Chamber of Commerce, will enable local businesses to obtain more contracts with the City and boost the local economy.

Grant Resolutions - Prepared 16 resolutions authorizing grant applications from state funding for improvements to City parks. The money obtained from these grants funded the creation of new parks, the improvement of existing parks, or the purchase of new playground equipment for youths in Long Beach.

British Petroleum Pipe Spill/Leak at Public Service Yard - Advised various City departments in followup response to broken oil company pipe on City property, including negotiating additional soil testing. Testing is ongoing and cost of cleanup is expected to be significant.

NPDES Issues - Advised re Clean Water Program regarding ongoing requests from Regional Water Quality Control Board to expand program at City's cost; advised in the preparation of new permit application. Monitored NPDES-related litigation involving Los Angeles County and cities.

Colorado Lagoon - Advised on consultant selection and public input for Restoration Feasibility Study.

Adopt-A-Waterway - Advised on changes to program for corporate recognition and public information provides supplemental funding for stormwater programs as required by NPDES permit.

Airport Environmental Compliance - Advised regarding obligations under NPDES and other state and Federal environmental regulations.

Environmental Review of City Bid Specifications and Property Transactions - Reviewed major specification packages and certain other agreements for compliance with environmental laws and regulations.

Environmental Claims - Represented the City in negotiations with State and Federal agencies concerning the City's liability in regards to contaminated sites outside of the City.

CUPA - Advised Health Department regarding dissolution of Long Beach-Signal Hill Certified Unified Program Agency and transfer of responsibilities from Long Beach Health Department to City of Signal Hill and County of Los Angeles.

Aquatic Pesticides - Advised Environmental Health Bureau of Health Department regarding reconciling conflicting laws and regulations requiring and prohibiting the use of pesticides on or near water or wetlands.

Rancho Los Alamitos - Assisted in preparation of settlement document which resolved issues appealed by the other parties. Advised re: post-trial operational issues.

Skate Parks - Advised Parks, Recreation and Marine Department on opening skate parks to other equipment including scooters and BMX bikes.

Crossing Guards - Advised City departments regarding changes to school crossing guard program.

Art in the Public Right-of- Way - Advised Public Works Department regarding specific installations proposed for City sidewalks.

Parkway Occupancy and Maintenance Issues - Advised Public Works in the application of the City's parkway maintenance and street tree policies.

Motorcycle Parking - Prepared an ordinance permitting the designation of motorcycle-only parking areas and prohibiting the parking of motorcycles in adjacent angled parking spaces.

Vehicles “For Sale” - Prepared ordinances prohibiting vehicles with “For Sale” signs on designated streets.

Newsracks - Worked with City staff, downtown businesses and publication vendors to develop downtown-area pilot program. Prepared ordinance reorganizing Municipal Code sections on newsracks to clarify the requirements for various pilot areas.

Developer Improvements - Assisted Public Works in settling a developer’s responsibility for funding street improvements and obtaining payment.

Housing Authority “Section 8” Program Funding Shortfall - Provided legal advice on permissible modifications to federal program in response to retroactive decreased funding appropriations.

Section 8/HOME Programs - Advised client on resolving conflicting requirements between the two HUD programs.

Housing Authority Hearings - Attended hearings and provided advice regarding changes to the Housing Authority hearing process.

Child Internet Protection Act (CIPA) - Advised Library staff on decision to install filters on all Library Internet terminals as a condition of Federal funding.

Homework Helpers - Advised the Library on the use of City employees to provide homework assistance at LBUSD schools.

Wheelchairs in Skate Park - Assisted the Department of Parks, Recreation and Marine in developing accommodations for use of skate park by disabled persons.

Senior Transportation - Advised City departments on the creation of a Sixth District Senior Transportation Program.

Christian Books Study Group - Advised Library regarding the free use of its facilities (for which rent is usually charged) and First Amendment requirements.

MacDonald’s Easements - Negotiated extensively with a representative of McDonald’s Corporation who contended that the Corporation should not be required to comply with the City’s conditions of approval.

Brooks College - Advised Library to decline request from the College to enter into an agreement whereby Brooks College students would have special enhanced borrowing privileges at City libraries.

Police and Fire Agreement - Negotiated on behalf of the Long Beach Police and Fire Departments and Long Beach Community College for an Instructional Services Agreement.

Special Events - Advised office of Special Events on First Amendment issues relating to demonstrations, parades and marches.

Community Development - Negotiated on behalf of the Workforce Development Bureau contracts and grant agreements for implementation of the Workforce Investment Act.

Fire Department - Negotiated a Billing Agreement with American Medical Response of Southern California to allow the City to recover costs incurred for advanced life support services provided to patients at the scene of emergency incidents.

Bankruptcy Claims & Litigation - Reviewed and prepared bankruptcy claims, objections or responses to adversarial proceedings involving bankruptcies in which City is creditor, landlord, or lender as necessary to protect the City's debts, taxes and loans, resulting in collections of over \$105,000 from debtor estates during this fiscal year; dismissal of an adversarial action by Teligent Services Inc. to disallow \$8,500 of tax money paid to the City; and removal of surety lawsuit against City to bankruptcy court for resolution of \$607,570 in estate funds.

Tax Collection - Prepared several opinions to Financial Management relating transient occupancy tax, utility users tax, and business license tax as to interpretation and/or application on collections, exemptions, audits, claims, records, hearings, and nonpayment.

Energy Department - Prepared or reviewed ordinances, resolutions, opinions and contracts relating to energy matters and gas service, regulations, rates, drug and alcohol testing, and gas fumigation (tenting) liability.

Enforcement of Telephone UUT - Provided legal counsel for League of California Cities UUT Task Force and City for issues related to utility user tax (UUT), potential legislation, litigation and other tax issues, resulting in a projected increase of \$1.8 million in City's telephone UUT for 2004.

Proposed State Legislation - Prepared legal opinions and/or recommendations on pending state legislation relating to transient occupancy tax, ad valorem property tax and energy issues.

Legal Advice Relating to City Audits - Assisted City Auditor's office with legal opinions and recommendations on several tax audit issues.

Earthquake Assessment District - Assisted with Earthquake Assessment District foreclosures involving bankruptcies.

Qui Tam Tax Litigation - Represented City in obtaining dismissal of qui tam tax action.

Antitrust Litigation - Provided advice and assistance on antitrust lawsuit against El Paso and Southern California Gas Co. related to high gas prices during the 2000-2001 energy crisis.

Class Action Gas Litigation - Provided advice and assistance in defending class action lawsuit against City seeking to charge gas customers rates below the cost of gas to the City's municipal gas utility during 2000-2001 energy crisis.

Gas Franchise Fee Litigation - Provided advice and assistance in lawsuit against Southern California Gas Company for underpayment of gas franchise fees of \$8 million for service to the electric plants during 2000-2001 energy crisis.

Documentary Transfer Tax Litigation - Successfully litigated collection lawsuit jointly with LA County and Redondo Beach for documentary transfer tax due the City of Long Beach from Southern California Edison, AES and Dynergy for underpayment of the City's transfer tax at the time Edison's electric generation plants were sold in 1998 which resulted in \$61,242 in additional tax to the City. Assisted LA County Counsel with appeal when AES Alamosa unsuccessfully sought to reduce its property tax values using the DTT tax base.

Appeal of FEMA Federal Audit - Continuing negotiations with Financial Management and federal government on City's FEMA appeal of disallowance of approximately \$1.7 million for police and fire department services during the 1992 civil unrest.

Death Benefits and Widow's Pensions - Routinely prepared all documents and declarations to allow proper payment of monies due upon death to current and/or retired employees or their spouses or next of kin, and for City Council approval of widow's pensions.

Long Beach Cemetery - Reviewed and prepared documents and declarations to allow proper transfer of cemetery plots of Old Municipal Long Beach Cemetery and project to identify and clean headstones. Proposed revisions of cemetery fees.

Gas Transportation Agreements - Prepared agreements relating to gas transportation and purchases between the City and several gas transportation customers.

911 Emergency Fee - Prepared legal opinion on 911 emergency surcharge for telephone customers within the City of Long Beach.

Business License Tax on Real Estate Agents - Prepared legal opinion on imposing business license tax on real estate salespersons and methodology for imposing tax.

LNG Project at Port - Prepared motion by City to seek party status at FERC on SES project for LNG facility at Port. Provided advice and counsel concerning LNG project at Port and monitored other interested party filings at FERC and CPUC relating to LNG project and similar projects.

Tobacco and Cigarette Regulations - Reviewed and advised City Council concerning existing municipal regulations and legislation relating to restricting tobacco and cigarette use and sales in other California cities.

Voice Over Internet Protocol (VoIP) - Monitored state and federal regulatory proceedings and legislation relating to VoIP (Voice over Internet Protocol). Provided overview of telephone companies conversion from traditional circuit-switch network into one that relies on the internet to carry voice and data through VoIP technology.

Fiber Optic Cable in Municipal Gas Pipelines - Provided legal analysis and opinion regarding the use and possible franchising of fiber optic cable in the City's municipal gas pipelines.

HARBOR DIVISION

July 1, 2003 through June 30, 2004
(3 Attorneys)

STATISTICS

TOTAL ASSIGNMENTS 1571

Activity by Major Categories:

(The following statistics do not include approvals of documents as to form, verbal/telephonic advice, reopened assignments, etc.)

**Documents prepared
(contracts, leases, permits, property purchase agreements, etc.) 307**

Board Ordinances 32

Board Resolutions 44

Public works contracts and related issues 85

Public Records Requests and Subpoenas 114

Formal written opinions/advice memoranda 107
(excluding numerous informal e-mail advice memoranda)

Insurance review and approval 449

Claims 22

SIGNIFICANT ACHIEVEMENTS

Harbor Law Division Legal Services
Provided to Harbor Department

Engineering Division Contracts - The Harbor Department currently has over \$260 Million budgeted for major capital projects. Most are multi-year projects, requiring numerous separate professional services contracts, construction contracts and amendments. In addition to contract preparation and the review and approval of both specifications and bids received, additional review and advice is given relating to change orders, stop notices, permitting by other agencies, changed field conditions, etc. Several disputes have recently arisen from construction contracts requiring substantial legal support.

Other Division Contracts - All ten divisions of the Department require contracts to be prepared and approved by Harbor Division attorneys, including contracts for materials and equipment acquisitions, professional and technical services, vessel charters, software licenses, etc.

Property Use Agreements - Harbor Division attorneys prepare purchase and sale agreements, preferential assignment agreements (i.e., terminal leases), crane leases, surface use permits, pipeline and utility permits, area assignments, rights of entry and other property agreements, including negotiating drafts. This year involved negotiation or renegotiation of several major terminal leases as terminals were reconfigured and reassigned.

Ordinances and Resolutions - All land use agreements and tariff amendments must be implemented by ordinances or resolutions which are prepared by Harbor Division attorneys. Additionally, there are more complex resolutions and ordinances prepared in connection with a variety of matters, such as approval of environmental impact reports, salary resolutions, bond issues and other matters.

Insurance - All contracts and property use agreements involve review and approval by Harbor Division attorneys of insurance documents. Additionally, the Department maintains its own program of coverages, including property, vehicles, vessels, etc., which is reviewed and approved by Harbor Division attorneys.

Harbor Development/Coastal Act Permits - The Harbor Board has been designated as the local Coastal Commission authority for all development within the Harbor District. Additionally, the City Charter requires a Harbor Development Permit for any work (public or private) performed within the Harbor District. Harbor Division attorneys advise Harbor staff regarding Coastal Act matters and assist in drafting permits and related documents.

Master Plan/Amendments - Harbor Division attorneys advise the Planning Division regarding the Port Master Plan and assist in the preparation of amendments.

Public Records Act Requests/Subpoenas - The Harbor Department maintains its own extensive records center. Harbor Division attorneys advise the Administration Division regarding release and copying of Harbor records.

Board and Staff Meetings - At least one Harbor Division attorney attends all Board meetings, with others present on an occasional basis as needed in connection with particular matters.

Port Reconfiguration - Container vessels are growing larger and the volume of trade continues to increase, but available land in the port is limited and environmental restrictions have become increasingly stringent. The Harbor Department is reconfiguring existing terminals to meet current and future demands. This redevelopment requires substantial legal support relating to environmental analysis and documentation, design and construction contract preparation and administration, terminal lease drafting and negotiation, and financing.

Alameda Corridor/ACTA JPA - This is a \$2.4 billion rail corridor under the jurisdiction of a joint powers authority known as the Alameda Corridor Transportation Authority or ACTA. Harbor Division attorneys are primarily responsible for legal representation of the City of Long Beach and the Board in ACTA matters.

Bonds - The Harbor Department finances major projects with revenue bonds. Additionally, the Harbor Department maintains a Commercial Paper program for short-term supplemental financing. Both of these programs generate legal work for Harbor Division attorneys.

Naval Properties - Harbor Division attorneys continue to work on numerous issues regarding reuse of the Naval properties, including development and leasing, environmental remediation and property transfer.

Harbor Litigation - Harbor Division attorneys supervise and coordinate legal services of outside attorneys working on certain Harbor Department matters. There are currently 39 pending cases involving the Harbor Department as plaintiff or defendant.

WORKERS' COMPENSATION DIVISION

**July 1, 2003 through June 30, 2004
(3 Attorneys)**

The Workers' Compensation Division of the City Attorney's Office is responsible for providing medical and indemnity benefits to injured employees covered by the City's Self Insured and Self Administered Workers' Compensation Program. In fiscal year 2004 there were 6,873 employees covered under this program; 758 fewer employees than in fiscal 2003.

City Attorney staff initiates the investigation of cases and oversees the provision of benefits. Staff is also responsible for complying with all statutory notice requirements and State reporting requirements. In addition, it coordinates return to work efforts with the departments and also institutes the provision of vocational rehabilitation when an injured worker can no longer return to usual and customary duties. The claims staff monitors medical treatment and intervenes when it appears that the treatment provided is inappropriate. In addition, the claims staff resolves all cases involving injured workers who receive permanent disability awards but who are not represented by counsel. During this fiscal year the claims staff processed 51 such awards.

In fiscal year 2003 the City Attorney's office, in conjunction with the City Manager's office, proposed a study of the workers' compensation program in order to identify ways to reduce costs and improve operations. City Council approved the use of Deloitte Consulting to conduct the study. Deloitte Consulting completed its study in February, 2004 and presented it to City Council in March, 2004.

The report of Deloitte Consulting recommended several changes to the workers' compensation claims operation. The primary recommendation was that a new Risk Management Information System be established to provide the data necessary to comply with industry standards and to allow better dissemination of information to the outside departments.

The Deloitte Consulting report also recommended changes to claims management and procedures. City Attorney staff with input from various outside departments has begun to implement the operational changes in order to comply with the best practices identified by Deloitte Consulting. Staff is also undergoing a change in its organizational structure in order to be more efficient, reduce costs and improve service. All of these changes, including implementation of the new RMIS System, will be operational February 1, 2005.

Many of the recommendations of Deloitte Consulting require the participation of departments outside the City Attorney's office. The Deloitte study recognized the need to make changes in the operations and procedures related to reporting injuries, to referring employees for medical treatment, and to finding and returning employees to both temporary and permanent modified jobs. The Deloitte study also recommended that safety management and loss prevention become more critical priorities.

Our office anticipates that the operational changes being implemented and the efficiencies which result from the new Risk Management Information System will result in substantial savings in workers' compensation. However, even without those changes in place and even before the study was completed the City began to experience a decrease in workers' compensation costs. The numbers demonstrate that medical payments during this fiscal year were 20% below the payments made in fiscal year 2003 and indemnity payments were 14% lower than such payments during 2003.

BENEFITS PAID

<u>Year</u>	<u>Medical Payments</u>	<u>Indemnity Payments</u>	<u>Total Benefits</u>
2004	\$7,985,620.00	\$7,738,900.00	\$15,634,520.00
2003	9,981,257.00	8,997,666.00	18,978,923.00
2002	8,309,733.00	7,957,820.00	16,267,553.00

NEW CLAIMS FILED

<u>Year</u>	<u>Number of Claims</u>
2004	883
2003	1068
2002	1026

The reduction in claims this past fiscal year is undoubtedly related in part to the fact that the City workforce has been reduced by 758 employees. In addition in fiscal 2003 and early fiscal 2004 there were a large number of retirements so that the City workforce may be younger than in prior years.

An analysis of new claims received in fiscal 2004 reveals that the percentage of the new claims that resulted in lost time from work was lower by 36%. This indicates fewer severe injuries and/or an improved effort by the departments to return employees to modified duty.

The reduction in lost time injuries is reflected in the lower indemnity payments.

The reduction in medical payments is related in large part to the fact that medical invoices are reviewed by a bill review service. During this last fiscal year the reviews have resulted in a 52% reduction in medical payments. In other words, the City has only paid 48% of the charges billed by medical providers in fiscal 2004.

The majority of claims involve legitimate industrial injuries. In those cases benefits are quickly provided. However, there are a certain number of claims that require more extensive investigation. During the period 7/1/03 through 6/30/04, decisions on 169 of the 1068 claims reported were delayed to allow investigation. Of those delayed cases, 114 claims were denied. Therefore, approximately 13% of the 883 total claims reported were denied as not being compensable injuries.

The numbers below reveal a slight decrease in litigation in 2004 from the prior year 2003. Of the 167 litigated cases filed in fiscal 2003-2004, 88 were for legal disputes over injuries which occurred during fiscal 2003-2004. The other 79 litigated claims were filed for injuries prior to fiscal 2003-2004.

NEW APPLICATIONS FOR LITIGATION

Year	Number of Applications
2004	167
2003	184
2002	188

Litigated workers' compensation claims are handled by two Deputy City Attorneys and one Principal Deputy City Attorney. Each attorney handles the litigated claims for approximately 100 employees. It should be noted that the majority of employees who are represented by counsel have more than one litigated claim at a time. Therefore, the actual number of cases handled by each attorney is substantially greater than 100 files.

During the period 7/1/03 through 6/30/04, 49 cases were set for trial at the Workers' Compensation Appeals Board. Of these, 19 cases, or 39% were litigated to conclusion.

Employees who file Applications for Adjudication of Workers' Compensation Claims often file other litigation against the City. Litigated workers' compensation claims often accompany Disability Retirement Applications, Civil Rights litigation, Civil Service litigation and actions against third party tortfeasors. For this reason, the Workers' Compensation attorneys often work closely with Departmental Counsel and Liability attorneys who handle these other files.